

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION

CASE NO. _____

CHANIA WARE, an individual, and
EUGENE HUNTER, an individual,

Plaintiffs

vs.

CITY OF FORT MYERS, a
municipal subdivision of the State of
Florida; DONALD WEATHERS, an
individual; RICHARD NOTARO, an
individual; MATTHEW SCHULZE, an
individual; VINCENT DOYLE, an
individual; HANNA RENNA, an individual;
JASON GREENE, an individual;
WOLFGANG DANIEL, an individual;
JAY RODRIGUEZ, an individual;
DENNIS EADS, an individual;
JOHN/JANE DOE, an individual(s).

Defendants.

_____ /

COMPLAINT

Plaintiffs, EUGENE HUNTER (“HUNTER”) and CHANIA WARE (“WARE”), through undersigned counsel, make the following allegations against Defendants, CITY OF FORT MYERS (“FORT MYERS”), a municipal subdivision of the State of Florida; DONALD WEATHERS (“WEATHERS”), an employee of the Fort Myers Police Department (“FMPD”), in his capacity as an individual; RICHARD NOTARO (“NOTARO”), an employee of FMPD, in his individual capacity; MATTHEW SCHULZE (“SCHULZE”), an employee of FMPD, in his capacity as an individual; VINCENT DOYLE (“DOYLE”), an employee of FMPD, in his capacity as an individual; HANNA RENNA (“RENNA”), an employee of the Office of the State Attorney,

20th Judicial Circuit of Florida (“LEE SAO”), in her capacity as an individual; JASON GREENE (“GREENE”), an employee of FMPD, in his capacity as an individual; WOLFGANG DANIEL (“DANIEL”), an employee of FMPD, in his capacity as an individual; JAY RODRIGUEZ (“RODRIGUEZ”), an employee of FMPD, in his capacity as an individual; DENNIS EADS (“EADS”), an employee of FMPD, in his capacity as an individual; and JOHN/JANE DOE (“DOE”)¹, as yet unknown employee(s) of FMPD and/or LEE SAO, in their capacity as individuals:

INTRODUCTION

This civil action arises from separate, yet inextricably connected deprivations of liberty imposed on HUNTER and WARE (collectively “Plaintiffs”). Both Plaintiffs were arrested pursuant to narcotics interdiction operations conducted by FMPD and supervised by LEE SAO. The sting operations had at their roots, an irretrievably compromised informant and a detective whose desire to preserve his arrests supplanted his duty to uphold the law.

Plaintiffs now bring federal constitutional claims and state tort claims for the deprivations of their protected rights by the Defendants, operating under the color of state law.

JURISDICTION AND VENUE

1. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343, 42 U.S.C. § 1983, and the Fourth and Fourteenth Amendments of the United States Constitution.

2. This Honorable Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

¹ Undersigned counsel, upon information and belief, understands there to be additional individual Defendants who were aware of Donald Weathers’ misconduct in his continued use of [REDACTED] as a confidential informant. The identities of said individuals are unknown at this time, but undersigned counsel believes that information will be revealed through discovery, upon which, said individuals will be joined.

PARTIES

3. Plaintiff, HUNTER, at all times material, is a citizen of the United States, a resident of Lee County, Florida, and is *sui juris*.

4. Plaintiff, WARE, at all times material, is a citizen of the United States, a resident of Lee County, Florida, and is *sui juris*.

5. Defendant, FORT MYERS, is a municipal subdivision of the State of Florida and is the legal entity responsible for itself. This Defendant is also the employer of several other named Defendants and is the proper entity to be sued under 42 U.S.C. § 1983.

6. FORT MYERS both exercised and delegated its municipal final decision-making power to the Chief of FMPD and others.

7. FORT MYERS is properly sued directly under 42 U.S.C. § 1983 for its own, and its delegated, deliberately indifferent unconstitutional decisions, policies, practices, habits, customs, usages, training and derelict supervision, ratification, acquiescence, and intentional failures, which were moving forces in the complaint of constitutional and statutory violations and resulting injuries.

8. FORT MYERS is also properly sued under 42 U.S.C. § 1983 for the challenged delegated final decisions of any final delegated decision-makers, with respect to the hereinafter challenged deliberately indifferent policies, decisions, widespread habits, customs, usages, and practices.

9. Defendant, WEATHERS, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

10. Defendant, NOTARO, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

11. Defendant, SCHULZE, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

12. Defendant, DOYLE, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

13. Defendant, RENNA, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

14. Defendant, GREENE, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

15. Defendant, DANIEL, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

16. Defendant, RODRIGUEZ, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

17. Defendant, EADS, upon information and belief and at all times material, is a resident of Lee County, Florida, an employee of FMPD, and is *sui juris*.

18. Defendant(s), DOE, upon information and belief and at all times material, is a resident(s) of Lee County, Florida, an employee of FMPD and/or LEE SAO, and is *sui juris*.

19. Defendants, WEATHERS, NOTARO, SCHULZE, DOYLE, RENNA, GREENE, DANIEL, RODRIGUEZ, and EADS will, at times, be referred to as the “Individual Defendants.”

20. Defendants, were at all times material, “state actors” as defined in 42 U.S.C. § 1983.

PROCEDURAL CONSIDERATIONS

21. All conditions precedent, including but not limited to, compliance with Florida Statutes § 768.28, have occurred, been satisfied, or have been waived.

FACTUAL ALLEGATIONS

The Arrest and Incarceration of Chania Ware

22. On or about April 22, 2016, WARE, was arrested in FORT MYERS by FMPD officers.

23. WARE was charged with multiple offenses related to two video-recorded narcotics purchases orchestrated by FMPD on November 18, 2015, and November 24, 2015.

24. On both occasions, WARE was contacted in advance by [REDACTED], who solicited WARE for the purpose of purchasing illegal narcotics from WARE.

25. Unbeknownst to WARE, [REDACTED], was acting as a confidential informant at the direction of WEATHERS.

26. WEATHERS had previously recruited [REDACTED] as an informant following [REDACTED]'s arrest for prostitution.

27. Prior to meeting with WARE at predetermined locations, on both occasions, NEESE was fitted with audio transmitting and audio/video recording devices by WEATHERS, who was assisted by other officers from FMPD.

28. Then [REDACTED] while under the constant supervision of WEATHERS and other officers of FMPD, met with WARE and allegedly conducted cash transactions for illicit drugs. The transactions were conducted in similar fashion on both November 18, 2015, and November 24, 2015.

29. On May 19, 2016, LEE SAO formally charged WARE as follows:

- a. November 18, 2015 case (Lower court case number 16-CF-015868): Sale or Delivery of Cocaine, F.S. 813.13(1)(a), second-degree felony; Possession of Cocaine, F.S. 893.13(6)(a), third-degree felony;

- b. November 24, 2015 case (Lower court case number 16-CF-015867): Sale or Delivery of Controlled Substance, F.S. 893.13(1)(a)1, second-degree felony; Possession of Controlled Substance, F.S. 893.13(6)(a), third-degree felony.

30. On August 9, 2016, following a plea agreement, WARE was sentenced, on both cases, to 12 months community control followed by 36 months state probation, to be served concurrently; \$413.00 court costs; \$100.00 cost of prosecution, \$50.00 public defender application fee, \$100.00 public defender fee; 1-year driver's license suspension; \$100.00 FDLE fee; substance abuse evaluation within 30 days (all terms to run concurrently).

31. As a result of her arrest, WARE was incarcerated for 2 days and spent an additional 365 days on community control.

The Arrest and Incarceration of Eugene Hunter

32. On or about March 11, 2016, HUNTER was arrested, and then re-arrested on March 14, 2016 after bonding out, in FORT MYERS by FMPD.

33. HUNTER was charged with multiple offenses related to seven video-recorded narcotics purchases orchestrated by FMPD on November 25, 2015, December 26, 2015, December 30, 2015, February 25, 2016, February 26, 2016, March 9, 2016, and March 11, 2016.

34. On all seven occasions, HUNTER was contacted in advance by [REDACTED], who solicited HUNTER for the purpose of purchasing illegal narcotics from HUNTER.

35. Unbeknownst to HUNTER, [REDACTED], was acting as a confidential informant at the direction of WEATHERS.

36. Prior to meeting with HUNTER at predetermined locations, on all seven occasions, [REDACTED] was fitted with audio transmitting and audio/video recording devices by WEATHERS, who was assisted by other officers from FMPD.

37. Then [REDACTED], while under the constant supervision of WEATHERS and other officers of FMPD, met with HUNTER and allegedly conducted cash transactions for illicit drugs. The transactions were conducted in similar fashion on all seven occasions.

38. LEE SAO formally charged HUNTER as follows:

- a. November 25, 2015, December 26, 2015, and December 30, 2015, narcotics purchases were filed on April 15, 2016 (Lower court case numbers 16-CF-015162, 16-CF-015161, and 16-CF-015160, respectively);
- b. February 25, 2016, February 26, 2016, and March 9, 2016, narcotics purchases were filed on April 14, 2016 (Lower court case numbers 16-CF-015159, 16-CF-015158, and 16-CF-015157, respectively); and
- c. March 11, 2016, narcotics purchase was filed on April 8, 2016 (Lower court case numbers 16-CF-015140 and 16-CF-015139).

39. On November 28, 2016, HUNTER entered a plea of no contest to all charges and was sentenced to 80 months in the custody of the Florida Department of Corrections.

The Discovery of Misconduct

40. On or about March 22, 2017, Sergeant Brian O'Reilly ("O'REILLY"), at the direction of the chief of FMPD, began an audit of the FMPD's Special Investigations Group ("SIG"). A copy of O'REILLY's report is incorporated herein and attached hereto as Exhibit "A."

41. During the course of the audit Detective Candice Pettacio ("PETACCIO"), who was assisting O'REILLY, advised O'REILLY of a rumor that a SIG informant had performed oral sex on a suspect during a video-recorded narcotics purchase.

42. O'REILLY subsequently interviewed FMPD Senior Staff Assistant, Jill Newhouse ("NEWHOUSE"), whom PETACCIO had identified as the source of the rumor.

43. NEWHOUSE informed O'REILLY that, at some point in 2016, NEWHOUSE had entered the SIG conference room after being disturbed by loud laughter coming from the room.

44. Upon entering, NEWHOUSE observed a video playing on the conference room television which depicted a confidential informant performing oral sex on a suspect.

45. Present in the room at the time, per NEWHOUSE's recollection, was DOYLE, NOTARO, RENNA, SCHULZE, AND WEATHERS. NEWHOUSE advised that the individuals in the room were laughing at the video.

46. NEWHOUSE reported the incident to RODRIGUEZ and EADS.

47. In subsequent interviews both RODRIGUEZ and EADS either deny ever being informed about the incident or suggest the incident was not reported in such a manner as to cause them to take action.

48. Although NEWHOUSE could not identify the confidential informant depicted in the video by name, she informed O'REILLY that WEATHERS was the informant's "control detective."

49. Following a subsequent review of SIG files, O'REILLY was able to identify the confidential informant depicted in the video as [REDACTED].

50. Additionally, O'REILLY was also able to determine that the video was recorded during a narcotics purchase which took place, on or about, February 26, 2016. O'REILLY obtained a copy of the video with the assistance of NEWHOUSE.

51. The suspect depicted in the video was identified as Frank Thomas ("THOMAS").

52. Upon review of the video, O'REILLY learned that WEATHERS, SCHULZE, and RENNA were all present inside of a surveillance vehicle monitoring [REDACTED] as she conducted the narcotics purchase with THOMAS on February 26, 2016.

53. Through subsequent interviews with RENNA, NEWHOUSE, MEEKS, PETACCIO, DANIEL, GREENE, SCHULZE, and DOYLE, O'REILLY learned that, following NEESE's encounter with THOMAS, [REDACTED] entered the surveillance vehicle and informed the occupants that she had performed oral sex on THOMAS.

54. O'REILLY further discovered that MEEKS, DANIEL, and GREENE were also present in the SIG conference room when NEWHOUSE had initially seen the video. DANIEL and GREENE had performed perimeter surveillance duties during the encounter between [REDACTED] and THOMAS and had returned to the conference room with the rest of the surveillance team.

55. [REDACTED] had purchased narcotics from THOMAS on two other occasions, February 18, 2016, and February 25, 2016. While THOMAS was arrested for those two narcotics purchases, O'REILLY learned that FMPD never charged THOMAS with the narcotics purchase of February 26, 2016.

56. Additionally, WEATHERS never entered the narcotics purchase of February 26, 2016, in the contact log he was required to maintain for all of his contacts with [REDACTED]. The narcotics purchases of February 18, 2016, and February 25, 2016, however, were documented by WEATHERS in the log.

57. WEATHERS utilized [REDACTED] to conduct five additional narcotics purchases, including two involving HUNTER, following [REDACTED]'s encounter with THOMAS on February 26, 2016.

58. WEATHERS never disclosed [REDACTED]'s sexual encounter with THOMAS to either WARE or HUNTER's defense counsel and, in fact, was found by O'REILLY to have made statements that were "evasive, deceptive, or untruthful" regarding [REDACTED]'s performance as an informant during a deposition conducted on August 18, 2016.

59. O'REILLY submitted his findings to LEE SAO on or about May 24, 2017, with a request that WEATHERS be charged with Perjury under Section 837.02(1), Florida Statutes.

60. On May 31, 2017, LEE SAO issued a memo outlining its decision not to pursue charges against WEATHERS. However, the memo also noted a "legitimate concern" regarding WEATHERS' "judgment and truthfulness."

The "Needs Assessment"

61. On February 22, 2017, Freeh Group International Solutions, LLC ("FGIS") published a "needs assessment" of FMPD (the "Assessment"), which was commissioned by FORT MYERS. A copy of the Assessment is incorporated herein and attached as Exhibit "B."

62. In the Assessment, FGIS notes systemic issues related to, among other things, FMPD training, law enforcement tactics, and discipline.

63. Specifically, the Assessment found that FMPD lacked sufficient training in areas such as interviewing, report writing, and fulfilling discovery obligations. Additionally, the Assessment noted a general lack of opportunities for formalized training and a scarcity of experienced supervisory staff.

64. The Assessment also noted a failure of FMPD leaders to adequately address instances of misconduct related to its officers.

Dismissal of All Charges against Chania Ware and Eugene Hunter

65. Defense counsel for WARE and HUNTER filed motions to vacate the judgments and sentences against both on August 31, 2017, and September 26, 2017, respectively.

66. On September 25, 2017, a stipulated order granting the motion to vacate filed on behalf of WARE was issued. Additionally, LEE SAO filed notices of *nolle prosequi* on all charges

against WARE on September 26, 2017. A copy of the Order, Stipulation and Nolle Prosequi is incorporated herein and attached hereto as Composite Exhibit “C.”

67. On November 30, 2017, a stipulated order granting the motion to vacate filed on behalf of HUNTER was issued. Additionally, LEE SAO filed notices of *nolle prosequi* on all charges against HUNTER on December 5, 2017. A copy of the Order, Stipulation and Nolle Prosequi is incorporated herein and attached hereto as Composite Exhibit “D.”

COUNT I – MALICIOUS PROSECUTION (STATE TORT)
AS TO DEFENDANT, WEATHERS

68. Plaintiffs re-allege, adopt, and incorporate the allegations contained in paragraphs one (1) – sixty-seven (67) as if fully set forth herein.

69. WEATHERS wrongfully caused criminal proceedings to be instituted against Plaintiffs, with malice and absence of probable cause, or arguable probable cause, by submitting police reports and providing testimony containing false statements and/or material omissions, which were relied upon by prosecuting authorities.

70. Based on the aforementioned false statements and/or material omissions by WEATHERS, LEE SAO filed charging documents containing multiple counts against Plaintiffs.

71. Plaintiffs were subsequently incarcerated and/or suffered other deprivations of their freedom and liberty.

72. Upon discovery of WEATHERS’ actions, and filing of motions for post-conviction relief by counsel for Plaintiffs, all charges against Plaintiffs were ultimately dismissed.

73. As a direct and proximate result of WEATHERS’ conduct, Plaintiffs suffered loss of their liberty and freedom resulting in, among other damages, emotional distress. These losses are either permanent or continuing, and Plaintiffs will suffer the losses in the future, in violation of their civil rights.

WHEREFORE, Plaintiffs hereby demand judgment against FORT MYERS for all damages allowable by law and for any other relief this Court deems just and proper.

**COUNT II – FAILURE TO INTERVENE IN VIOLATION OF THE FOURTH AND
FOURTEENTH AMENDMENT (42 U.S.C. § 1983) AS TO DEFENDANTS, WEATHERS,
NOTARO, SCHULZE, DOYLE, RENNA, GREENE, DANIEL,
RODRIGUEZ, EADS, AND DOE**

74. Plaintiffs re-allege, adopt, and incorporate the allegations contained in paragraphs one (1) – sixty-seven (67) as if fully set forth herein.

75. 42 U.S.C. § 1983, in pertinent part, provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress ...

76. In committing the acts complained of herein, the Individual Defendants acted jointly and under color of state law to deprive Plaintiffs of their clearly established constitutionally protected rights under the Fourth and Fourteenth Amendments to the United States Constitution including, but not limited to:

- a. Freedom from unreasonable seizure;
- b. The right to be free from unreasonable searches;
- c. Freedom from deprivation of liberty and property without due process of law; and
- d. Freedom from arbitrary governmental activity which shocks the conscience of a civilized society.

77. In violating Plaintiffs rights, as set forth above and other rights that will be proven at trial, the Individual Defendants acted under color of state law.

78. The acts or conduct committed by the Individual Defendants against Plaintiffs occurred in the presence of each other and the Individual Defendants further violated Plaintiffs constitutional rights by failing to intervene and prevent the violation of Plaintiffs constitutional rights by fellow officers.

79. All Individual Defendants knowingly and deliberately conspired to deprive Plaintiffs of their civil rights.

80. The Individual Defendants engaged in the conduct described by this Complaint willfully, maliciously, in bad faith, and in reckless disregard of Plaintiffs' federally protected constitutional rights.

81. They did so with shocking and willful indifference to Plaintiffs' rights and the conscious awareness that they would cause Plaintiffs severe injuries.

82. The acts or omissions of the Individual Defendants were moving forces behind Plaintiffs' injuries.

83. The acts or omissions of the Individual Defendants as described herein intentionally deprived Plaintiffs of their constitutional rights and caused them other damages.

84. These Individual Defendants are not entitled to qualified immunity for the complained of conduct.

85. The Defendants to this claim at all times material hereto were acting pursuant to municipal/county custom, policy, decision, ordinance, regulation, widespread habit, usage, or practice in their actions pertaining to Plaintiffs.

86. As a direct and proximate result of the violation of their constitutional rights by the Individual Defendants, Plaintiffs suffered general and special damages as alleged in this Complaint and are entitled to relief under 42 U.S.C. § 1983.

87. The injuries and damages are permanent in nature, and Plaintiffs will suffer the losses and impairments in the future.

88. In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against each of the individually named Defendants under 42 U.S.C. § 1983, in that the actions of each of these individual Defendants have been taken maliciously, willfully or with a reckless or wanton disregard of the constitutional rights of Plaintiffs.

89. Plaintiffs are entitled to recover reasonable attorneys' fees for the successful prosecution of this claim pursuant to 42 U.S.C. § 1988.

WHEREFORE the Plaintiffs hereby demands judgment against the Individual Defendants for compensatory damages, punitive damages, attorneys' fees, and asks for any other relief this Court deems proper.

**COUNT III – DELIBERATE INDIFFERENCE IN VIOLATION OF THE FOURTH
AND FOURTEENTH AMENDMENTS (42 U.S.C. § 1983)
AS TO DEFENDANT, FORT MYERS**

90. Plaintiffs re-allege, adopt, and incorporate the allegations contained in paragraphs one (1) – sixty-six (66) as if fully set forth herein.

91. 42 U.S.C. § 1983, in pertinent part, provides that:

Every person, who under color of any statute, ordinance, regulation, custom or usage of any state or territory or the District of Columbia subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and law shall be liable to the party injured in an action at law, suit in equity, or other appropriate proceeding for redress ...

92. The Defendant to this claim at all times material hereto was acting under the color of state law.

93. Plaintiffs had the following clearly established constitutionally protected rights under the Fourth and Fourteenth Amendments to the United States Constitution at the time of the complaint conduct, including, but not limited to:

- a. Freedom from unreasonable seizure;
- b. The right to be free from unreasonable searches;
- c. Freedom from deprivation of liberty and property without due process of law; and
- d. Freedom from arbitrary governmental activity which shocks the conscience of a civilized society.

94. Defendant, FORT MYERS, knew or should have known of these rights at the time of the complained of conduct as they were clearly established at that time.

95. The acts or omissions of FORT MYERS, as described herein, deprived Plaintiffs of their constitutional and statutory rights and caused them other damages.

96. The acts or omissions of the Individual Defendants as described herein, intentionally deprived Plaintiffs of their constitutional and statutory rights and caused them other damages.

97. These Defendant is not entitled to qualified immunity for the complained of conduct.

98. FORT MYERS was, at all times material hereto, policymakers for FMPD, and in that capacity established policies, procedures, customs, and/or practices for the same.

99. FORT MYERS developed and maintained policies, procedures, customs and/or practices exhibiting deliberate indifference to the constitutional rights of citizens, which were moving forces behind and proximately caused the violations of Plaintiffs' constitutional and

federal rights as set forth herein and in the other claims, resulted from a conscious or deliberate choice to follow a course of action from among various available alternatives.

100. FORT MYERS has created and tolerated an atmosphere of lawlessness, and has developed and maintained long-standing, department-wide customs, law enforcement related policies, procedures, customs, practices, and/or failed to properly train and/or supervise its officers in a manner amounting to deliberate indifference to the constitutional rights of Plaintiffs and of the public.

101. In light of the duties and responsibilities of those employees that participate in arrests, detention and preparation of police reports on alleged crimes, the need for specialized training and supervision is so obvious, and the inadequacy of training and/or supervision is so likely to result in the violation of constitutional and federal rights, such as those described herein, that the failure to provide such specialized training and supervision is deliberately indifferent to those rights.

102. The deliberately indifferent training and supervision provided by FORT MYERS resulted from a conscious or deliberate choice to follow a course of action, from various alternatives available to FORT MYERS, and were moving forces in the constitutional and federal violation injuries complained of by Plaintiffs.

103. As a direct and proximate result of the violation of their constitutional rights by the Defendants, Plaintiffs suffered general and special damages as alleged in this Complaint and is entitled to relief under 42 U.S.C. § 1983.

104. The injuries and damages are permanent in nature, and the Plaintiffs will suffer the losses and impairments in the future.

105. In addition to compensatory, economic, consequential and special damages, Plaintiffs are entitled to punitive damages against Defendant FORT MYERS under 42 U.S.C. § 1983.

106. Plaintiffs are entitled to recover reasonable attorneys' fees for the successful prosecution of this claim pursuant to 42 U.S.C. § 1988.

WHEREFORE the Plaintiffs hereby demands judgment against the Individual Defendants for compensatory damages, punitive damages, attorneys' fees, and asks for any other relief this Court deems just and proper.

COUNT IV – NEGLIGENCE (State Tort) AS TO
DEFENDANT, FORT MYERS

107. Plaintiffs re-allege, adopt, and incorporate the allegations contained in paragraphs one (1) – sixty-seven (67) as if fully set forth herein.

108. At all times material hereto, FMPD was a law enforcement agency.

109. At all times material hereto, the Individual Defendants were officers, employees or agents of FMPD and acted within the course and scope of their respective employment or agency.

110. FORT MYERS is responsible for the actions of his employees acting within the course and scope of their employment.

111. FORT MYERS had a duty to protect Plaintiffs from malicious prosecutions enacted by officers it employs.

112. FORT MYERS knew or should have known that there were significant deficiencies in the training and supervision of FMPD officers and a widespread failure to address misconduct within the police department.

113. FORT MYERS breached its duty to Plaintiffs by failing to ensure that FMPD officers had adequate training and supervision regarding the use and handling of confidential

informants and that misconduct among officers was adequately addressed.

114. FORT MYERS and/or its agents, servants and/or employees further breached its duty to Plaintiffs for acts and/or omissions that include, but are not limited to, the following:

- a. Failure to disclose exculpatory evidence; and/or
- b. Failure to properly supervise and oversee the officers interacting with a confidential informant; and/or
- c. Failure to promulgate, enforce and/or comply with adequate policies and procedures for the proper reporting of instances of misconduct; and/or
- d. Failure to promulgate, enforce and/or comply with adequate policies and procedures for the intervention by fellow officers when an officer fails to discontinue use of a compromised confidential informant; and/or
- e. Failure to properly train officers to know when use of a confidential informant should be discontinued.

115. As a direct and proximate result of FORT MYERS' breaches, Plaintiffs suffered damages. Plaintiffs suffered loss of their liberty and freedom resulting in, among other damages, emotional distress, loss of the enjoyment of life, mental anguish and inconvenience. These losses are either permanent or continuing, and Plaintiffs will suffer the losses in the future.

WHEREFORE, Plaintiffs hereby demand judgment against FORT MYERS for all damages allowable by law and for any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues triable by jury.

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DATED this 11th day of March 2019.

Respectfully submitted,

FISCHER REDAVID PLLC

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